

LETTER OPINION
95-L-104

April 24, 1995

Mr. Rolf P. Sletten
Executive Secretary and Treasurer
North Dakota State Board of
Medical Examiners
418 East Broadway Avenue, #12
Bismarck, ND 58501

Dear Mr. Sletten:

Thank you for your letter inquiring whether an individual who is licensed to practice chiropractic, but not licensed to practice medicine, is authorized to perform high school sports physicals in North Dakota.

Under North Dakota law, the practice of chiropractic includes:

- a. The examination, evaluation, and diagnosis, by means including X-ray, other appropriate diagnostic imaging, clinical laboratory procedures, or pertinent examinations taught by chiropractic colleges accredited by the council on chiropractic education or its successor;
- b. The treatment of patients by means of the adjustment or manipulation of the spinal column, the vertebral articulations, the appendicular skeleton not excluding the skull, and of any displaced tissue of any kind or nature;
- c. The practice of physiotherapy, electrotherapy, hydrotherapy;
- d. All other procedures taught by chiropractic colleges, accredited by the council on chiropractic education or its successor; and
- e. The rating and reporting of any permanent impairment of function and the providing of professional opinions regarding any matter included in this definition of practice of chiropractic as set out herein.

The practice of chiropractic does not include prescribing

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for or administering to any person any medicine or drug to be taken internally which is now or hereafter included in materia medica, nor performing any surgery, except as is provided in this section, nor practicing obstetrics.

N.D.C.C. ? 43-06-01(2). The North Dakota Supreme Court has found "that the practice of chiropractic is the practice of medicine, although in a restricted form." Klein v. Harper, 186 N.W.2d 426, 431 (N.D. 1971). A doctor of chiropractic who is duly licensed to practice in North Dakota pursuant to the statutes regulating the profession of chiropractic is exempt from the provisions of the chapter governing physicians and surgeons. N.D.C.C. ? 43-17-02(8). See also Klein, supra, 186 N.W.2d at 430.

The North Dakota High School Activities Association (HSAA) prohibits pupils from representing their school in high school athletics until there is on file with the superintendent or the principal a statement signed by a physician or nurse practitioner and the pupil's parents or legal guardian certifying that the pupil has passed an adequate physical examination since May 20 of the past school year, that in the opinion of the examining physician or nurse practitioner the pupil is physically fit to participate in such activities, and that the pupil has the consent of the pupil's parents or legal guardian to participate. Art. XI of the Constitution and Bylaws of the North Dakota High School Activities Association.

See also, Letter from Attorney General Nicholas J. Spaeth to Dr. Wayne G. Sanstead, April 28, 1989. In addressing your question, it must be remembered that these requirements of the HSAA are not pursuant to a law or regulation of the sovereign state but instead are the bylaws of a private organization which would not be bound by any opinion of this office. Letter from Assistant Attorney General Lynn E. Erickson to Mr. Howard J. Snortland, July 24, 1979.

This office previously concluded that a chiropractor may not perform physical examinations upon high school students to determine their fitness to participate in athletic activities.

Letter from Attorney General Nicholas J. Spaeth to Dr. Wayne G. Sanstead, April 28, 1989. This opinion relied upon then existing statutory language limiting examination, evaluation, and diagnosis in the practice of chiropractic to matters which are preparatory to the treatment of patients. Id. The language, "preparatory to the treatment of patients," was removed from the statutory definition of chiropractic in 1991.

1991 N.D. Sess. Laws ch. 451, ? 1. This legislative amendment also added to the definition of chiropractic:

The rating and reporting of any permanent impairment of function and the providing of professional opinions regarding any matter included in this definition of practice of chiropractic as set out herein.

N.D.C.C. ? 43-06-01(2)(e). Thus, the legislative changes made by the 1991 Legislative Assembly to the definition of the practice of chiropractic allow a chiropractor to examine, evaluate, and diagnose by means of x-ray and other chiropractic procedures or examinations encompassed by accredited chiropractic college instruction. N.D.C.C. ? 43-06-01(2)(a). Moreover, rating of permanent impairment of function and professional opinions are circumscribed by the definition of chiropractic practice. N.D.C.C. ? 43-06-01(2)(e). Even though a chiropractic evaluation need no longer be preparatory to treatment of patients, it may not exceed, in scope, chiropractic procedures as taught by accredited chiropractic colleges. N.D.C.C. ? 46-06-01(2)(a). This is also the case with respect to permanent impairment ratings and professional chiropractic opinions. N.D.C.C. ? 46-06-01(2)(e). This conclusion is supported by legislative history. The legislative purpose of 1991 N.D. Sess. Laws ch. 451 was to allow doctors of chiropractic "to rate and report any permanent impairment of function and issue professional opinions regarding any matter within the scope of chiropractic practice." (Emphasis added.) Hearing on S. 2138 Before the Senate Comm. on Human Services and Veterans Affairs, 52nd N.D. Leg. (January 21, 1991) (Legislative Council bill summary). Senate Bill 2138 was intended to amend the statutory definition of chiropractic to permit chiropractors to make permanent impairment ratings and issue opinions regarding such ratings. Id. (Statements of Arly Richau, Dick Tessier, and C. H. Winkler) (January 21, 1991).

While N.D.C.C. ? 43-06-01(2) authorizes chiropractors to make diagnostic examinations and issue opinions regarding any matter within the scope of chiropractic practice, it does not authorize diagnostic examinations and chiropractic opinions concerning a patient's general physical condition. Thus, while a chiropractor's professional diagnosis and opinion is no longer limited by the requirement that it be preparatory to the treatment of patients, it is, nevertheless, limited to matters within the "scope of chiropractic practice."

Under N.D.C.C. ? 43-06-01(2), the treatment that doctors of chiropractic are authorized to provide includes manipulation and adjustment procedures concerning the spinal column and appendicular skeleton and other therapies "taught by [accredited] chiropractic colleges." Because examinations,

evaluations and diagnoses are to be based on techniques and procedures taught by chiropractic colleges and related to the practice of chiropractic, they are limited in scope. Likewise, impairment of function ratings and the provision of professional chiropractic opinions may encompass only matters encompassed by the "practice of chiropractic." N.D.C.C. ? 43-06-01(2)(e). Therefore, a chiropractor may make an examination, evaluation or diagnosis and provide a professional opinion concerning any physical condition that may be evaluated by procedures and examinations taught by accredited chiropractic colleges.

In my opinion this would not encompass a general physical examination concerning any physical condition or disease not directly related to the practice of chiropractic. See, e.g., Howe v. Smith, 199 A.2d 521 (Pa. Super Ct. 1964) (determining that statute defining chiropractic practice did not authorize chiropractors to diagnose generally); Cmwlth., Dept. of Transp. Hear. Bd. v. Pa. Chiro. Soc., 349 A.2d 509 (Pa. Cmwlth. 1976). See also N.D.C.C. ? 43-17-01(2) (practice of medicine includes the diagnosis of diseases or injuries and "any form of treatment . . . of any physical or mental ailment").

A review of the physical exam form used by HSAA discloses that the examining physician or nurse practitioner is to evaluate whether various medical factors are satisfactory including lungs, heart, hernia, urine, eyes, ears, nose, throat, and abdomen. The factors to be evaluated that appear encompassed by chiropractic procedures and treatment relate to the back, and upper and lower extremities. A medical history is to be obtained with respect to kidney and heart problems, asthma, absence of diabetes, epilepsy, and use of medication, among other items, including surgeries. Those kinds of medical problems or conditions are not within the scope of chiropractic practice. See Wilk v. American Medical Ass'n, 671 F.Supp 1465, 1482 (N.D. Ill. 1987) (enjoining the AMA from restricting AMA members from professionally associating with chiropractors in violation of antitrust laws) (finding no one including chiropractors "believes that chiropractic treatment should be used for the treatment of diseases such as cancer, diabetes, heart disease, high blood pressure, and infections").

The North Dakota Legislature determines the scope of practice of all licensed health care professions. Letter from Attorney General Heidi Heitkamp to Rolf P. Sletten (March 15, 1995). The conclusion reached in my predecessor's opinion concerning sports physicals deserves reiteration. "[T]he practice of chiropractic is limited to those procedures specifically permitted by statute. Expansions of the practice of chiropractic beyond these statutory limitations must be based on explicit statutory language, not broad inferences." Letter

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from Attorney General Nicholas J. Spaeth to Dr. Wayne G. Sanstead (April 28, 1989).

This opinion does not affect the right of private organizations or individuals, such as the HSAA, to establish standards or specific requirements with respect to professionals authorized to conduct a physical examination under internal governance policies for their own purposes.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

tam/jfl